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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,044	07/10/2003	Dan M. Berger	AM100056 D1	4109

25291 7590 06/15/2005

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EXAMINER

SACKEY, EBENEZER O

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,044

Applicant(s)

BERGER ET AL.

Examiner

EBENEZER SACKKEY

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,10,19,20,22-34 and 36 is/are pending in the application.
- 4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,10,19 and 20 is/are allowed.
- 6) ☒ Claim(s) 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to the amendment filed 02/14/05.

Status of Claims

Claims 1, 10, 19-20, 22-34 and 36 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 22 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for specific neoplasm's' (colon cancer, lung cancer, colonic polyps, does not reasonably provide enablement for all neoplasm's. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims for the reasons set forth in the previous office action mailed on 10/01/04.

Response to Amendment

Applicant's arguments filed 02/14/05 have been fully considered but they are not deemed persuasive. Applicants argue that the instant claim language in claim 22 appears in parent patent number 6,638,929. This is not persuasive because each and every application is treated on its own merit. However, it is suggested that applicants incorporate claim 23 where the specific diseases are recited into claim 22 to clearly define the invention.

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Applicants need to cancel claims 32-33 because defining diseases by its (their) underlying cause renders the scope of the intended uses indeterminate since the claim language may read on diseases not yet known to be caused by or affected by such action or ways not yet understood.

Amending the claims as suggested would appear to put the case in condition for allowance.

Claims 1, 10, 19, 20 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Sackey whose telephone number is (571) 272-0704.

The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm.

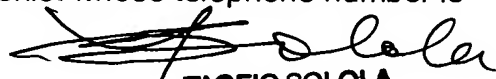
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272-0699. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is

(571) 272-1600.

EOS

June 13, 2005



TAOFIO SOLOLA
PRIMARY EXAMINER

Dr. T. Solola
Primary Patent Examiner
Art Unit 1626, Group 1600
Technology Center 1